IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 543 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJ.

Versus

M/S POPATLAL JADAVJI & SONS

Appearance:

PUBLIC PROSECUTOR for Petitioner

MR AR THACKER for Respondent No. 1 to 3

NOTICE SERVED for Respondent No. 4

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 22/08/2000

ORAL JUDGEMENT

1. The present appeal is preferred by the State of Gujarat against a judgment and order rendered by the learned Judicial Magistrate, First Class, Gondal, in Criminal Case No.978 of 1986 against present respondents

No.1 to 3 in a prosecution under Sections 7 and 16 of the Prevention of Food Adulteration Act, 1954, rendered on May 2, 1991.

2. On March 27, 1986, the Food Inspector/complainant visited the provision store run by respondents No.2 and 3 in capacity of a Food Inspector. He took sample of edible groundnut oil after following the procedure prescribed under the Food Adulteration Act and the Rules. The samples collected were properly sealed and a sample was sent to the Public Analyst for chemical analysis. According to the prosecution case, the same was found not to conform to the prescribed standards and, therefore, a complaint was lodged against the respondents. On receipt of the report from the Public Analyst, in compliance to the requirements of Section 13(2) of the Food Adulteration Act, the Local Health Authority intimated the respondents about the contents of the report and informed them about their right of getting the sample examined by the Central Food Laboratory by making an application to the Court. The plea was recorded, trial was conducted and, ultimately, the learned Magistrate acquitted the accused/respondents No.1 to 3 of the charges on the grounds that the sanction was not proper and the trial was, therefore, vitiated. He placed reliance on decision of this Court in the case of Ramanbhai Shivabhai Prajapati v. State of Gujarat & Another, reported in 1990 Criminal Law Journal 496 (Gujarat), as the sanction granted by the authority was found to be defective on account of non-mentioning of the provisions of the Act.

3. The State is aggrieved by the said judgment and order and challenges the same by this appeal mainly on the ground that the learned Magistrate committed an error in coming to the above conclusion. It is contended that the Chemical Analyser's report clearly indicates that the muddamal article is adulterated. The order of the learned Magistrate is, therefore, perverse and the appeal may, therefore, be allowed.

4. Mr. Gohil, learned Additional Public Prosecutor, has relied on the contentions raised in the appeal. He submitted that the decision relied upon by the learned Magistrate has now been reversed by a Division Bench of this Court in Harshvadan Dahyalal Sevak, Food Inspector v. Nareshbhai Devandas Vaghvani & Another, 1991(2) GLH 615. He, therefore, urged that the judgment may be set aside and the respondents be convicted.

5. Mr. Thakkar, learned advocate appearing for

respondents No.1 to 3, submitted that the judgment of the Trial Court is based only on singular finding on aspect of defective sanction. No other contentions are discussed by the learned Trial Magistrate. He submitted that assuming that the reasoning adopted by the learned Magistrate is not in accordance with law as on today, but when the judgment was rendered, the judgment relied upon by the learned Magistrate was holding the field. Apart from this, Mr. Thakkar submitted that there is non-compliance of requirements of Section 13(2) of the Food Adulteration Act, which has been held to be mandatory by the Apex Court in the case of Rameshwar Dayal v. State of U.P., 1996 SCC (Criminal) 75. He has drawn attention of this Court to Ex.31 to show that there is non-compliance of the requirements of Section 13(2) of the Food Adulteration Act. He submitted that Ex.31 relates to a report of the Public Analyst in respect of chilly powder, whereas, in the instant case, substance involved was groundnut oil. He urged that the case of the accused is, therefore, prejudiced and in light of the decision of the Apex Court in the case of Rameshwar Dayal, the acquittal may be sustained and the appeal may be dismissed.

6. Considering rival side contentions, it may be noted that the complaint against the accused was in respect of a sample of edible groundnut oil which, according to the complainant, did not conform to the standards prescribed as per the report of the Public Analyst. The Trial Court has not made any observation regarding merits of the case or following of the required procedure, but has based its verdict only on the ground of defective sanction. Mr. Thakkar, in all fairness, concedes that the judgment relied upon by the Trial Magistrate does not hold the field as on today in light of a subsequent decision rendered by a Division Bench of this Court in the case of Harshvadan Dahyalal Sevak, Food Inspector v. Nareshbhai Devandas Vaghvani & Another, 1991(2) GLH 615.

7. The conclusion of acquittal, therefore, is based on an erroneous reasoning. But in view of this Court, though the reasoning is erroneous, the conclusion cannot be said to be erroneous for the reason that there is non-compliance of requirements of Section 13(2) of the Food Adulteration Act, which can be said to have caused prejudice to the interest of the accused. This conclusion is arrived at upon inspection of the record. The notice given to the accused to meet with the requirements of Section 13(2) of the Act (Ex.31), if perused, relates to chilly powder and not groundnut oil,

the substance in question in this case. Not only that, the notice Ex.31 is in respect of Criminal Case No.977 of 1986 whereas the present appeal arises out of Criminal Case no.978 of 1986. Therefore, the notice Ex.31 cannot be said to be in respect of the present case against the accused. There is nothing to indicate that there is compliance of requirements of Section 13(2) of the Act in respect of present case relating to groundnut oil against the accused. If this is so, the accused's right of getting the sample examined by the Central Food Laboratory is affected and can be said to have caused prejudice to the interest of the respondents. Perusal of the record indicates that, factually also, the right of getting the sample examined by the Central Food Laboratory has not been exercised by the accused. Under the circumstances, in light of the decision of the Apex Court in the case of Rameshwar Dayal (supra) it can be said that prejudice is caused to the accused because of non-compliance of Section 13(2) of the Act and, therefore, in view of this Court, the acquittal cannot be disturbed.

8. For the foregoing reasons, the appeal merits dismissal and the same is dismissed.

[A.L. DAVE, J.]

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